IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 35789 of 2005(I)

AGAINST THE ORDER IN IA.3066/05 IN
OS.170/1991 of ADDL.SUB COURT, PALAKKAD
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PETITIONERS:
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1. SELVAM KUMAR, W/O. LATE KUMAR,

2. RAJASREE, D/O. LATE KUMAR,

3. RAJEEVKUMAR, S/O. LATE KUMAR.
ALL ARE RESIDING AT SREERAGAM, VADAKKANTHARA AMSOM
PALAKKAD TALUK.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.SREEKANTH.K.R
SRI.JIBU P THOMAS

RESPONDENTS:
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1. V. PRABHAKARAN, S/O. GOVINDAN NAIR,
RESIDING AT VAISAK, KALVAKULAM ROAD, KOPPAM AMSOM,
PALAKKAD TALUK.

2. K.P. RAVINDRANATHAN,
S/O. K.V.R. UNNI NAIR, RESIDING AT KRISHNAKRIPA,
PUTHUR AMSOM, PALAKKAD TALUK.

3. E. PADMASEKHARAN,
S/O. GOPALAKRISHNA MENON, RESIDING AT SAI SADANAM,
RAMANATHAPURAM, PUTHUR AMSOM, PALAKKAD TALUK.

BY ADV. SRI.O.RAMACHANDRAN NAMBIAR
SRI.GEEN T.MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC NO.35789/05)

PETITIONERS' EXT.:

EXT.P1: TRUE COPY OF THE ORDER IN I.A.3066/03 IN O.S.NO.170/01 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF PALAKKAD DATED 9.12.2005.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.35789 of 2005

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Dated: 6th June, 2007

JUDGMENT

The plaintiffs in a suit for recovery of money challenges Ext.P1 order passed by the learned Subordinate Judge dismissing an application filed by them for forwarding a promissory note relied on by them as one of the important documents on the basis of their plea in support of the plaint claim. The execution of the promissory note was stiffly denied by the defendants-respondents. When the first petitioner was examined on the side of the plaintiffs as P.W.1 she would state in cross-examination that her late husband Kumaran in whose favour the promissory note is seen executed also signed as a witness in the promissory note. In fact she stated that Kumaran put two signatures in the promissory note. The above statement of the 1st petitioner, according to Mr.V.Chitambaresh, counsel for the petitioners, was wrong and according to him the 1st petitioner is a rustic lady who is not conversant with the intricacies of documents. Mr.Chidambaresh submits that an agreement was subsequently executed between defendants 1 and 2 and the 1st petitioner inducting the 1st petitioner as a partner in place of Kumaran, the 1st petitioner's husband who had leave for Tanzania and it is in that agreement that

Kumaran had signed as a witness. Mr.Chitambaresh in fact placed before me a copy of the above partnership agreement. I find that in that agreement Mr.Kumaran is a witness. Counsel points out that prior to instituting the suit a demand notice had been served on the defendants to which they did not send any reply. According to the learned counsel, the suit is being instituted on a genuine cause of action and the learned Subordinate Judge, Palakkad has issued succession certificate to the petitioners for recovering the suit amount. A copy of the succession certificate was also shown to me by the learned counsel. The petitioners who are the plaintiffs in the suit has no intention to prolong the litigation and it was not fair on the part of the learned Subordinate Judge to have blamed the plaintiffs for protracting the trial of the suit. No prejudice will be caused to the defendants by getting a forensic report regarding the disputed signature on the promissory note. In fact such a report is essential for resolving one of the cardinal issues in the suit.

2. Mr.O.Ramachandran Nambiar, learned counsel for the respondents does not agree. According to him, the partnership agreement placed before me by Mr.Chitambaresh is yet to be produced in the court. The entire trial is over and even argument

notes were submitted. No question even was asked in re-examination to the petitioner and she has not explained that her version in cross-examination that the promissory note contains the signature of her husband was a mistake and that what she had in mind was her husband's signature in the partnership agreement.

3. Even though I must agree with Mr.Nambiar when he says that the instant application was filed at a belated stage, I do not find good reason as to why the learned Subordinate Judge should dismiss the application. The view of the learned Subordinate Judge that no purpose will be served in obtaining the opinion of an expert in my opinion is not correct. The conclusion of the learned Subordinate Judge in the impugned order that the pronote in question is not the pronote referred to P.W.1 in her testimoney was not warranted. The said conclusion will be treated as provisional. The report of a forensic expert on a comparison of the disputed signatures of the defendants with their admitted signatures will be of assistance to the court to decide whether the contention that the defendants did not execute the promissory note is correct. The maximum that could have been done was to impose some condition while allowing the application. But as Mr.Chitambaresh submits that imposition of heavy cost will not

be justified since the suit is filed by the petitioners themselves.

4. Under these circumstances, the impugned order will stand set aside and the I.A. filed by the petitioners will stand allowed on condition that the petitioners pay a sum of Rs.1000/- by way of cost to the respondents through their counsel appearing in this court within two weeks from today. If payment is made as above, the I.A. will stand allowed. If payment is not made as directed above, the I.A. will stand dismissed and the impugned order will stand confirmed. All expenses necessary for getting the report will have to be borne by the petitioners.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**